CHAN HOON PIAW & ANOR

v.

CEMPAKA FINANCE BHD

HIGH COURT MALAYA, KUALA LUMPUR
JAMES FOONG J
[CIVIL APPEAL NO: 11-97-2000]
29 APRIL 2002

HIRE PURCHASE: *Hire-purchase agreement - Validity - Car let by finance company to hirer - Down-payment made by hirer to dealer before execution of hire purchase agreement - Whether finance company had ownership of car - Whether hirer already vested with ownership of car after making down-payment to dealer - Whether hire-purchase agreement rendered void - Whether hire-purchase agreement was a sham transaction to cover up a money-lending deal - Whether finance company entitled to summary judgment*

The 1st defendant was the hirer of a motor-car under a hire-purchase agreement entered into with the plaintiff finance company while the 2nd defendant was his guarantor. The 1st defendant defaulted in his repayment and the plaintiff repossessed the motor-car, sold it off and brought a claim against the defendants for a shortfall of RM10,236.34. This was the defendants' appeal from the decision of the magistrate allowing the plaintiff's application to enter summary judgment in respect of its said claim. The defendants' sole ground of appeal related to the down-payment or deposit of RM16,298.13 made by the 1st defendant to the motor-car dealer on 8 October 1997, which payment preceded the hire-purchase agreement entered into between the 1st defendant and the plaintiff on 12 November 1997. It was contended that the 1st defendant had acquired the title to (and hence ownership of) the motor-car well before the plaintiff could, and that the ensuing hire-purchase agreement was void as it was merely a sham transaction to cover up a money-lending deal. The defendants argued that this was a triable issue and the magistrate should not have granted the plaintiff summary judgment.

Held:

[1] There was no allegation by the defendants in their pleadings and affidavits that the hire-purchase agreement was void for being a sham transaction to cover up a money-lending deal. In the absence of such an allegation with evidence, the defendants contentions had no basis. (p 765 a-b)

[2] *Low Ping Ming v. MBf Finance Bhd* [2000] 2 CLJ 307 HC was distinguishable from the instant case as in that case there were substantial payments made by the hirer to the vendor at different intervals which implied that the financier had no title to or ownership of the goods at the time when the hire-purchase agreement was executed. Similarly, the decision of the court in *MBf Leasing Sdn Bhd v. Ban Huat Group Holdings Sdn Bhd & Ors* [2001] 1 AMR 329 HC also placed undue emphasis on the deposit paid by the hirer to the vendor there prior to the execution of the hire-purchase agreement with the financier, thus overlooking the usual commercial understanding as between financiers and vendors, which has been accepted by the courts, whereby it is a normal practice for a vendor to collect a down-payment from a hirer. (Hire-Purchase Act 1967, s. 32). (p 765 e-f)

[3] Consequently, the down-payment made by the 1st defendant to the motor-car dealer did not vest the 1st defendant with the ownership of the motor-car. The down-payment was only a deposit towards the hire-purchase of the motor-car, and the mere fact that it was paid to the motor-car dealer prior to the execution of the hire-purchase agreement with the plaintiff did not render the said agreement void. There was, therefore, no triable issue and the magistrate was correct in granting the plaintiff summary judgment. (pp 765 h & 766 a)

[Defendants' appeal dismissed.]

Case(s) referred to:
Ching Lai Huat v. UOL Credit Sdn Bhd [2002] 5 CLJ 449 HC ***(refd)***
Kesang Leasing Sdn Bhd v. Longwood Sdn Bhd [1988] 2 MLJ 328 ***(refd)***
Low Ping Ming v. MBf Finance Bhd [2000] 2 CLJ 307 HC ***(dist)***
MBf Leasing Sdn Bhd v. Ban Huat Group Holding Sdn Bhd & Ors [2001] 1 AMR 329 HC ***(not foll)***
United Investment & Finance Ltd v. Walker & Anor [1967] 1 MLJ 30 ***(refd)***

Legislation referred to:
Hire-Purchase Act 1967, s. 32

For the appellants/defendants - SV Modeshanantham; M/s Yee, Nantham, Leong & Partners
For the plaintiff/respondent - V Nithia Nanthan; M/s Ni, Sha & Co

Reported by Gan Peng Chiang

JUDGMENT

James Foong J:

Introduction

The 1st and 2nd defendants/appellants hirer and guarantor respectively of a second hand car (the said goods) under a hire-purchase agreement with the plaintiff/respondent. Due to the default of the 1st defendant, the plaintiff repossessed the said goods. It was subsequently sold and there is a short fall between the proceeds received from this and the balance outstanding. For this, the plaintiff claims from the defendants a sum of RM10,236.34 with interest and cost.

Pursuant to an application by the plaintiff for summary judgment, the learned magistrate granted the relief sought by the plaintiff. Dissatisfied, the defendants appealed to this court.

The Parties' Arguments

Mr. Nantham, counsel for the defendants, much to the appreciation of this court, submitted that the defence has only one ground for this appeal. This is the issue of deposit. He pointed out that from the invoice issued by the dealer of the said goods to the plaintiff, a down payment of RM16,298.13 is listed as paid. But what is significant is that this invoice is dated 8 October 1997. He then drew the attention of this court to the hire-purchase agreement, which reads: "12 November 1997" and a deposit of the same amount as having been made by the 1st defendant. Accordingly to him, this implies that the 1sf defendant had paid for the goods and became owner of it before the hire- purchase agreement was entered into. This, he said, makes the entire hire-purchase agreement void since it was a sham transaction to cover up a money lending deal.

The plaintiff, on the other hand, argued that: (a) the deposit, explicitly expressed in the hire-purchase agreement, was actually paid by the 1st defendant when the hire-purchase agreement was executed; (b) the down payment, as revealed in the dealer's invoice, is a matter between the 1st defendant and the dealer prior to the hire-purchase agreement and; (c) there was no sham transaction to cover up a money-lending scheme between the parties.

Analysis

At the outset, this court must bear in mind Mr. Nantham's reminder that all that was required by the defendant was to satisfy the learned magistrate that there is a triable issue raised. Bearing this, I shall now proceed to analyze the facts of this case to determine whether the learned magistrate has erred in his decision.

Firstly, I noticed there is no allegation of the hire purchase transaction being void for the reason that it was a sham to cover up a money lending arrangement in any of the defendants' pleadings and affidavits. Just because there was payment by the 1st defendant to the dealer prior to the execution of the hire-purchase agreement does not, in my view, render such agreement void. There must be an assertion why it is void followed by some evidence to support this claim. In the absence of such an allegation, there is no basis for the defendants to raise this claim.

Secondly, even if such claim is considered raised, to recapitulate the essential principle of hire purchase, the owner of the goods lets out on hire must be the owner of such goods. If the owner possesses no title to the goods or that the goods belong to the hirer instead, then such an arrangement cannot be considered as a hire-purchase and the hire-purchase agreement entered into between the parties would be void. In the presentation forwarded by the defendants, I gathered that they were trying to impress the court that the 1st defendant, by paying the down payment to the dealer, had become the owner of the goods under hire. To support this contention two cases were cited: *Low Ping Ming v. MBf Finance Bhd* [2000] 2 CLJ 307 and *MBf Leasing Sdn Bhd v. Ban Huat Group Holdings Sdn Bhd & Ors* [2001] 1 AMR 329.

The first, *Low Ping Ming*'s case, in my view can be distinguished. There substantial payments made by the hirer to the dealer at different intervals to imply that the owner possesses no title to or ownership of the hired goods at the time when the hire purchase-agreement was executed. In the *MBf Leasing* case, it is my humble view, that the learned judge has placed far too great an emphasis on the payment of a deposit to the dealer by the hirer prior to the hire-purchase agreement to infer that such an agreement was a sham to cover up a money lending arrangement. The learned judge, with greatest of respect, seems to over look the normal relationship between the hire purchase company and the dealer where it is usual for the dealer to collect from the hirer a down payment. Such practice has been accepted by the courts as not constituting a sham hire purchase arrangement: see *Kesang Leasing Sdn Bhd v. Longwood Sdn Bhd* [1988] 2 MLJ 328 at p. 332; *United Investment & Finance Ltd v. Walker & Anor* [1967] 1 MLJ 30 and *Ching Lai Huat v. UOL Credit Sdn Bhd* [2002] 5 CLJ 449. In fact s. 32 of the Hire-Purchase Act 1967 even allows a presumption that the mandatory deposits, required by the law to be made by the hirer to the owner in a hire purchase transaction, as having been made by the hirer if there had been earlier payment of such sums to the dealer. With such acknowledgment, I am of the view that the down payment made by the 1st defendant to the dealer in this case could not have been taken as conferment of ownership to the hirer of the said goods. Such payment would be treated as deposit towards the hire purchase, as was probably the case, by

the reflection of the invoice which was addressed to the plaintiff from the dealer. As the 1st defendant could not have been the owner of the said goods by this process, there is no other evidence to support the defendants' claim of the hire purchase transaction being a sham arrangement. This entitles the plaintiff to a summary judgment.

Conclusion

Accordingly, I hereby dismiss the defendants' appeal with cost.